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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0938; FRL - 9928-79-Region 6]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico;
Transportation Conformity and Conformity of General Federal Actions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Federal Clean Air Act (Act), the Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP). These revisions update the transportation conformity rules and remove the general conformity provisions.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0938. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley (6PD-L), telephone: (214) 665-8542, e-mail: riley.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The background for this action is discussed in detail in our February 10, 2015 direct final rule and proposal (80 FR 7341). The rule and proposal stated that if any relevant adverse comments were received by the end of the public comment period, the direct final rule would be withdrawn and we would respond to the comments in a subsequent final action. A relevant adverse comment was received during the comment period, and the direct final rule was withdrawn on April 8, 2015 (80 FR 19020). Our proposal provides the basis for this final action. These revisions amend the transportation conformity SIP provisions and remove the general conformity provisions from the SIP, as allowed by the Act's 2005 amendments. These revisions

also address interagency consultation and enforceability of certain transportation-related control measures and mitigation measures.

We received one comment on the direct final rule by one commenter, Sierra Club. The comment and our response to the comment is below.

II. Response to Comments

Comment: “Acting regional administrator Sam Coleman cannot sign approvals, disapprovals, or any combination of approvals or disapproval, in whole or in part, due to the fact that agency actions on state implementation plans are required to be signed by the regional administrator, Ron Curry, not the current deputy regional administrator as stated in the agency’s delegations manual. The manual specifically states that SIP actions can’t be redelegated from the regional administrator.”

Response: As the Acting Regional Administrator, Deputy Regional Administrator Sam Coleman had authority to sign the proposal and direct final action on the SIP revisions. On January 28, 2015, the day that the proposal and direct final action were signed, Sam Coleman was acting in the capacity of the Regional Administrator for Ron Curry, who was absent from Region 6 at the time. The following language is listed in the Region 6 Deputy Regional Administrator’s position description “In the absence of the Regional Administrator, the Deputy Regional Administrator will perform the duties of the Regional Administrator.” Further, EPA Region 6 Order 1110.11 establishes a line of succession to perform the duties of the Regional Administrator should the Regional Administrator be absent from the office. The Deputy Regional Administrator is the first person listed on that line of succession. Copies of the two documents are included in the docket for this rulemaking. Finally, the heads of administrative

agencies are statutorily vested with the authority to delegate authorities to subordinate officials, 5 U.S.C. 302. Federal Courts have held that rules, including internal delegations and appointments of authority are effective regardless of publication in the Federal Register or the Code of Federal Regulations.

The comment only challenged the Deputy Regional Administrator's authority to sign the Direct Final Action. EPA received no other comments or challenges as to the substance of the proposal or direct final. Therefore, we are finalizing our action to approve these SIP amendments.

III. Final Action

Pursuant to sections 110 and 176 of the Act, EPA is approving three revisions to the New Mexico SIP that were submitted on October 28, 2011, November 1, 2013, and August 8, 2014. We evaluated the state's submittals and determined that they meet the applicable requirements of the CAA sections 110 and 176 and applicable EPA guidance. In accordance with CAA section 110(l), these revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 27, 2015.

Ron Curry,
Regional Administrator, Region 6.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. In § 52.1620, the first table in paragraph (c) entitled “EPA Approved New Mexico Regulations” is amended by:

- a. Removing the entry for “Part 98, General Conformity”;
- b. Revising the entries for “20.2.99.1” through “20.2.99.8”;
- c. Removing the entry for “20.2.99.9 to 20.2.99.100”;
- d. Revising the entries for “20.2.99.101” through “20.2.99.112”;
- e. Removing the entries for “20.2.99.113” through “20.2.99.154”.

The revisions read as follows:

§ 52.1620 Identification of plan.

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(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/effective date	EPA approval date	Comments
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Part 99 – Transportation Conformity				
20.2.99.1	Issuing Agency	7/11/2014	<u>[Insert the date of publication in the Federal Register]</u> <u>[Insert Federal Register Citation]</u>	

20.2.99.2	Scope	7/11/2014	<u>[Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.3	Statutory Authority	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.4	Duration	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.5	Effective Date	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.6	Objective	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.7	Definitions	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	

20.2.99.8	Documents	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.101	Applicability	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.102	Consultation	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.103	Agency Roles in Consultation	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.104	Agency Responsibilities in Consultation	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.105	General Consultation Procedures	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	

20.2.99.106	Consultation Procedures for Specific Major Activities	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.107	Consultation Procedures for Specific Routine Activities	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.108	Notification Procedures for Routine Activities	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.109	Conflict Resolution and Appeals to the Governor	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.110	Public Consultation Procedures	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
20.2.99.111	Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	

20.2.99.112	Savings Provision	7/11/2014	<u>Insert the date of publication in the Federal Register] [Insert Federal Register Citation]</u>	
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